



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Daniel, Elmer
Serial Number: 09/887,131
Filed: 2001.06.22
Title: Process Independent Alignment Marks
Examiner: H. Jey Tsai
Group Art Unit: 2812
Attorney Docket: 01-107

AMENDMENT B

Box Non-Fee-Amendment
Assistant Commissioner for Patents
Washington DC 20231

Sir:

This amendment is filed in response to the Office Action dated 2002.02.28.

IN THE CLAIMS

Please withdraw claims 7, 9-14, and 20 from consideration.

REMARKS

Claims 1-14 and 18-20 are in the case and subject to a *second* restriction requirement. Applicants hereby elect with traverse to prosecute the claims of Group I, including claims 1-6, 8, and 18-19. Thus, claims 7, 9-24, and 20 are additionally withdrawn from consideration. Reconsideration is requested.

However, restriction is not required by 35 U.S.C. § 121, as suggested in the office action. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted...." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

2812
#1/Election
w/Amend A
Good
5/20/02
RECEIVED
MAR 22 2002
TC 2800 MAIL ROOM